

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 556

Introduced by Assembly Member Gordon

February 16, 2005

An act to add ~~Sections 21669.5, 21699.7, 21669.8, and 21669.9 to,~~
Article 6 (commencing with Section 21691) to Chapter 4 of Part 1 of
Division 9 of the Public Utilities Code, relating to aeronautics.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as amended, Gordon. Airports: noise impacts.

(1) The State Aeronautics Act governs the establishment and operation of airports in this state. The act requires the Department of Transportation (*department*) to adopt noise standards governing the operation of aircraft and aircraft engines based upon the level of noise acceptable to a reasonable person residing in the vicinity of the airport. *Pursuant to that authority, the department has adopted regulations requiring an airport proprietor, as defined, that operates an airport with a noise impact area, as defined, that exceeds specified airport noise standards, to apply for and receive a variance, according to specified criteria and procedures. The existing regulations authorize a county, as defined, upon considering certain factors and following certain procedures, to declare an airport within its boundaries to have a noise problem and requires a county wherein a noise problem airport is situated to enforce specific regulations relative to noise monitoring and to submit quarterly reports to the department.*

~~This bill would require a proprietor of an airport having a noise impact area, as defined, to request prohibit the Department of Airports of the City of Los Angeles from operating an airport having a noise impact area, as defined, unless the Department of Airports has applied for and received from the department, a variance from noise standards in effect on January 1, 2006, for a period not exceeding 3 years, in accordance with prescribed procedures, including provision for a public hearing and for notice of the hearing to be provided by the Department of Airports to entities within, or associated with, the noise impact area, and provides for publication of notice of the hearing by the Department of Airports. The bill would prohibit an airport proprietor from operating an airport with a noise impact area unless the operator has applied for and received a variance in accordance with the bill. The bill would authorize the department, upon granting a variance, to impose reasonable conditions to achieve the purpose of attaining a level of noise acceptable to a reasonable person residing in the vicinity of the airport. This bill would provide a procedure for an airport proprietor the Department of Airports to apply for the extension of the variance. The bill would authorize the Los Angeles County Board of Supervisors, upon considering certain factors and following certain procedures, to declare the Los Angeles International Airport to have a noise problem and would authorize the board of supervisors or its authorized designee to require the Department of Airports to establish a program of noise monitoring pursuant to standards and procedures established by the department in regulation.~~

~~(2) A violation of the act is a crime. Under existing law, a violation of any provision of the act or any of the rules or orders issued under the act, is a crime.~~

~~This bill, by imposing the prohibition on airport proprietors operating without additional notification requirements upon the Department of Airports when seeking a variance, would create a new crime, thereby imposing a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 6 (commencing with Section 21691) is added to Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, to read:

Article 6. Los Angeles International Airport Noise Standards Compliance

21691. (a) *It is the intent of the Legislature that this article supplement, exclusively for the Los Angeles International Airport, the noise standards established by the department pursuant to Section 21669.*

(b) For purposes of this article, the following terms have the following meanings:

(1) “Airport” means the Los Angeles International Airport.

(2) “Daily community noise equivalent level” means the noise equivalent level, measured in decibels, that represents the average daytime noise level during a 24-hour day, adjusted to an equivalent level to account for the lower tolerance of people to noise during evening and nighttime periods relative to the daytime period. The community noise equivalent level is to be calculated from the hourly noise levels using the formula adopted in Section 5001 of Title 21 of the California Code of Regulations.

(3) “Department” means the Department of Transportation.

(4) "Department of Airports" means the Department of Airports, City of Los Angeles.

(5) “Incompatible land uses” means a land use that is for any of the following purposes:

(A) Residences, including single-family detached dwellings, multifamily dwellings, high-rise apartments or condominiums, modular housing, and mobilehomes, unless one of the following conditions exist:

(i) *A navigation easement for aircraft noise has been acquired by the Department of Airports.*

(ii) *The dwelling unit was in existence at the same location prior to January 1, 1989, and has adequate acoustic insulation to*

1 *ensure an interior daily community noise equivalent level due to*
2 *aircraft noise of 45 decibels or less in all habitable rooms.*
3 *However, acoustic treatment alone does not convert residences*
4 *having an exterior daily community noise equivalent level of 75*
5 *decibels or greater due to aircraft noise to a compatible land use*
6 *if the residence has an exterior normally occupiable private*
7 *habitable area such as a backyard, patio, or balcony.*

8 *(iii) The residence is a high-rise apartment or condominium*
9 *having an interior daily community noise equivalent level of 45*
10 *decibels or less in all habitable rooms due to aircraft noise, and*
11 *an air circulation or air-conditioning system as appropriate.*

12 *(iv) The Department of Airports has made a genuine effort, as*
13 *determined by the department in accordance with adopted land*
14 *use compatibility plans and appropriate laws and regulations, to*
15 *acoustically treat residences exposed to an exterior daily*
16 *community noise equivalent level less than 80 decibels, and 75*
17 *decibels if the residence has an exterior normally occupiable*
18 *private habitable area such as a backyard, patio, or balcony, or*
19 *acquires navigation easements, or both, for the residences*
20 *involved, but the property owners have refused to take part in the*
21 *program.*

22 *(v) The residence is owned by the Department of Airports.*

23 *(B) Public and private schools of standard construction for*
24 *which a navigation easement for noise has not been acquired by*
25 *the Department of Airports, or that do not have adequate*
26 *acoustic performance to ensure an interior daily community*
27 *noise equivalent level of 45 decibels or less in all classrooms due*
28 *to aircraft noise.*

29 *(C) Hospitals and convalescent homes for which a navigation*
30 *easement for noise has not been acquired by the Department of*
31 *Airports, or that do not have adequate acoustic performance to*
32 *provide an interior daily community noise equivalent level of 45*
33 *decibels or less due to aircraft noise in all rooms used for patient*
34 *care.*

35 *(D) Churches, synagogues, temples, and other places of*
36 *worship for which a navigation easement for noise has not been*
37 *acquired by the Department of Airports, or that do not have*
38 *adequate acoustic performance to ensure an interior daily*
39 *community noise equivalent level of 45 decibels or less due to*
40 *aircraft noise.*

(6) “Local government agency” means a county, city, whether general law or chartered, city and county, town, municipal corporation, a district of any kind, including a school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission, or other agency of any of the foregoing.

(7) “Noise impact area” means those portions of the areas contiguous to an airport that are subjected to a daily average noise level of more than 65 decibels resulting from aircraft, as measured on the community noise equivalent level, and has incompatible land uses within the noise impact area boundary.

(8) “Noise impact area boundary” is the locus of points around an airport for which the annual daily community noise equivalent level is equal to the airport noise standard established in Section 5012 of Title 21 of the California Code of Regulations in effect on January 1, 2006.

(9) “Noise level” means the amount of noise, as measured in decibels, of an A-weighted sound pressure level, measured using the slow dynamic characteristic for sound level meters specified in the American National Standard Specification for Sound Level Meters (ANSI S1.4-1983 as revised by ANSI S1.4A-1985).

(10) “Noise standards established by the department pursuant to Section 21669” means the airport noise standards adopted by the department in Section 5012 of Title 21 of the California Code of Regulations in effect on January 1, 2006.

21691.2. The Department of Airports shall not operate the airport if the airport has a noise impact area, unless the Department of Airports has applied for and received a variance in accordance with Section 21691.4.

21691.4. (a) The Department of Airports shall request a variance for any noise impact area, for a period not exceeding three years as set forth in this section.

(b) The procedures for requesting the variance are as follows:

(1) The Department of Airports shall apply to the department for a variance.

(2) An application for a variance shall be made upon a form that the department shall make available.

(3) The application shall set forth the reasons that support the necessity of a variance. The application shall state the date by which the Department of Airports expects to achieve compliance

1 *with the requirement that there not be a noise impact area. The*
2 *application shall set forth an incremental schedule of noise*
3 *impact area reductions for the intervening period.*

4 *(c) The department shall withhold its final determination with*
5 *regard to an application for a variance to provide adequate time*
6 *for notice to, and review and comment by, the general public,*
7 *landowners, residents, interested groups, local governments, and*
8 *other public agencies within the noise impact area of the airport.*

9 *(d) In granting any variance, the department shall be guided*
10 *by the underlying policy that if the existing airport has a noise*
11 *impact area the Department of Airports be required to develop*
12 *and implement programs to reduce the noise impact area of the*
13 *airport to an acceptable degree, in an orderly manner, over a*
14 *reasonable period of time.*

15 *(e) The department may grant a variance if it determines that*
16 *to do so would be in the public interest. In weighing the public*
17 *interest, the department's considerations include, but are not*
18 *limited to, all of the following:*

19 *(1) The economic and technological feasibility of complying*
20 *with the noise standards set by regulation.*

21 *(2) The noise impact if the variance is granted.*

22 *(3) The value to the public of the services for which the*
23 *variance is sought.*

24 *(4) Whether the Department of Airports is taking good faith*
25 *measures to the best of its ability to achieve the noise standards*
26 *established by the department pursuant to Section 21669.*

27 *(f) The department, in granting a variance, may impose*
28 *reasonable conditions to achieve the purposes of Section 21669,*
29 *as implemented by Chapter 6 (commencing with Section 5000) of*
30 *Division 2.5 of Title 21 of the California Code of Regulations, in*
31 *effect on January 1, 2006.*

32 *21691.6. (a) On its own motion, upon the request of a person*
33 *residing or owning property within a noise impact area, or upon*
34 *the request of a local government agency whose geographical*
35 *jurisdiction is within a noise impact area, the department shall*
36 *hold a public hearing in accordance with the Administrative*
37 *Procedure Act (Chapter 5 (commencing with Section 11500) of*
38 *Part 1 of Division 3 of Title 2 of the Government Code) on the*
39 *application for a variance.*

1 (b) Upon receipt of the notice of hearing date pursuant to
2 subdivision (a), the Department of Airports shall mail notice of
3 the hearing to landowners, residents, interested groups, local
4 governments, and other public agencies within, or otherwise
5 associated with, the noise impact area of the airport for which
6 the variance is sought. The Department of Airports shall also
7 publish notice of a hearing in at least one newspaper of general
8 circulation that serves subscribers in the area in which both the
9 airport and the noise impact area are located. The notice shall
10 include, but is not limited to, the information specified in Section
11 65094 of the Government Code.

12 (c) (1) The Los Angeles County Board of Supervisors may
13 declare the airport to have a noise problem, by the adoption of a
14 resolution to that effect and forwarding the resolution to the
15 department. In making the determination that the airport has a
16 noise problem, the Los Angeles County Board of Supervisors
17 shall do all of the following:

18 (A) Review relevant information, including the record of
19 complaints made about aircraft related noise and litigation filed
20 by residents of the area regarding airport related noise.

21 (B) Investigate the existence of a noise impact area.

22 (C) Coordinate with and give due consideration to the
23 recommendations of the county regional planning commission
24 acting pursuant to Section 21670.2.

25 (2) The Los Angeles County Board of Supervisors or its
26 authorized designee may require the Department of Airports,
27 upon finding that a noise problem exists, to establish a program
28 of noise monitoring pursuant to standards and procedures
29 established by the department in regulation.

30 (d) The failure of any person or entity to receive notice
31 pursuant to this section or pursuant to procedures established by
32 the department does not constitute grounds for any court to
33 invalidate an action of the department for which notice was given
34 in accordance with this section.

35 (e) The Department of Airports shall make the variance
36 application and related documents available for public review
37 and comment. Any person may obtain from the department
38 information on a pending request for a variance.

39 21691.8. If the department has granted a variance and the
40 Department of Airports determines that it cannot within the term

1 of that existing variance achieve compliance with Section 5012 of
2 Title 21 of the California Code of Regulations, in effect on
3 January 1, 2006, the Department of Airports shall request a new
4 variance at least 30 days before the termination date of the
5 existing variance. A variance requested pursuant to this section
6 is subject to Sections 21691.4 and 21691.6. If the Department of
7 Airports makes a timely application pursuant to this section, the
8 existing variance shall continue in effect until the department
9 acts on that application.

10 SEC. 2. The Legislature finds and declares that, because of
11 the unique circumstances applicable only to the Los Angeles
12 International Airport, and the need to provide more timely relief
13 to homeowners and other property owners from harmful noise
14 and adverse impacts associated with airport operations, a statute
15 of general applicability cannot be enacted within the meaning of
16 subdivision (b) of Section 16 of Article IV of the California
17 Constitution. Therefore, this special statute is necessary.

18 SECTION 1. ~~Section 21669.5 is added to the Public Utilities~~
19 ~~Code, to read:~~

20 ~~21669.5. (a) A proprietor of an airport having a noise impact~~
21 ~~area, as defined in Section 21669.9, shall request a variance from~~
22 ~~Section 5012 of Title 21 of the California Code of Regulations in~~
23 ~~effect on January 1, 2006, for a period not exceeding three years~~
24 ~~as set forth in this section.~~

25 ~~(b) The procedures for requesting the variance are as follows:~~

26 ~~(1) The airport proprietor shall apply to the department for a~~
27 ~~variance.~~

28 ~~(2) An application for a variance shall be made upon a form~~
29 ~~that the department shall make available.~~

30 ~~(3) The application shall set forth the reasons that support the~~
31 ~~necessity of a variance. The application shall state the date by~~
32 ~~which the airport proprietor expects to achieve compliance with~~
33 ~~the requirement that there not be a noise impact area. The~~
34 ~~application shall set forth an incremental schedule of noise~~
35 ~~impact area reductions for the intervening period.~~

36 ~~(c) The department shall withhold its final determination with~~
37 ~~regard to an application for a variance to provide adequate time~~
38 ~~for notice to, and review and comment by, the general public,~~
39 ~~landowners, residents, interested groups, local governments, and~~
40 ~~other public agencies within the noise impact area of the airport.~~

1 ~~(d) In granting variances, the department shall be guided by~~
2 ~~the underlying policy that the proprietor of each existing airport~~
3 ~~having a noise impact area be required to develop and implement~~
4 ~~programs to reduce the noise impact area of the airport to an~~
5 ~~acceptable degree in an orderly manner over a reasonable period~~
6 ~~of time.~~

7 ~~(e) The department may grant a variance if it determines that~~
8 ~~to do so would be in the public interest. In weighing the public~~
9 ~~interest, the department's considerations include, but are not~~
10 ~~limited to, all of the following:~~

11 ~~(1) The economic and technological feasibility of complying~~
12 ~~with the noise standards set by regulation.~~

13 ~~(2) The noise impact if the variance is granted.~~

14 ~~(3) The value to the public of the services for which the~~
15 ~~variance is sought.~~

16 ~~(4) Whether the airport proprietor is taking good faith~~
17 ~~measures to the best of its ability to achieve the airport noise~~
18 ~~standards.~~

19 ~~(f) The department, in granting a variance, may impose~~
20 ~~reasonable conditions to achieve the purposes of Chapter 6~~
21 ~~(commencing with Section 5000) of Division 2.5 of Title 21 of~~
22 ~~the California Code of Regulations in effect on January 1, 2006.~~

23 ~~SEC. 2. Section 21669.7 is added to the Public Utilities Code,~~
24 ~~to read:~~

25 ~~21669.7. (a) The department shall hold a public hearing in~~
26 ~~accordance with the Administrative Procedure Act (Chapter 5~~
27 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
28 ~~2 of the Government Code) on the application for a variance. The~~
29 ~~notice of a hearing shall be mailed by the airport proprietor 10~~
30 ~~days or more before the date of the hearing to the general public,~~
31 ~~landowners, residents, interested groups, local governments, and~~
32 ~~other public agencies within, or otherwise associated with, the~~
33 ~~noise impact area of the airport for which the variance is sought.~~
34 ~~The airport proprietor shall also publish notice of a hearing in at~~
35 ~~least one newspaper of general circulation that serves subscribers~~
36 ~~in the area in which both the airport and the noise impact area are~~
37 ~~located. The notice shall include, but is not limited to, the~~
38 ~~information specified in Section 65094 of the Government Code.~~

39 ~~(b) The failure of any person or entity to receive notice~~
40 ~~pursuant to this section or pursuant to procedures established by~~

1 the department does not constitute grounds for any court to
2 invalidate an action of the department for which notice was given
3 in accordance with this section.

4 (e) The airport proprietor shall make the variance application
5 and related documents available for public review and comment.
6 Any person may obtain from the department information on a
7 pending request for a variance.

8 SEC. 3. Section 21669.8 is added to the Public Utilities
9 Code, to read:

10 21669.8. If the department has granted a variance and the
11 airport proprietor determines that it cannot within the term of that
12 existing variance achieve compliance with Section 5012 of Title
13 21 of the California Code of Regulations, in effect on January 1,
14 2006, the airport proprietor shall request a new variance at least
15 30 days before the termination date of the existing variance. A
16 variance requested pursuant to this section is subject to Sections
17 21669.5 and 21669.7. If the airport proprietor makes a timely
18 application pursuant to this section, the existing variance shall
19 continue in effect until the department acts on that application.

20 SEC. 4. Section 21669.9 is added to the Public Utilities Code,
21 to read:

22 21669.9. No airport proprietor shall operate an airport with a
23 noise impact area unless the operator has applied for and
24 received a variance in accordance with Section 21669.5. "Noise
25 impact area" means those portions of the areas contiguous to an
26 airport that are subjected to a daily average of more than 65
27 decibels resulting from aircraft, as measured on the community
28 noise equivalent level.

29 SEC. 5.

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the
35 penalty for a crime or infraction, within the meaning of Section
36 17556 of the Government Code, or changes the definition of a
37 crime within the meaning of Section 6 of Article XIII B of the
38 California Constitution.

O